

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

**EDWARD E. STEWART, III,
Plaintiff,**

v.

**MICHAEL WENEROWICZ,
DENNIS BRUMFIELD,
MICHAEL DOYLE,
JOHN HOFER,
KEITH VANCLIFF,
ROBERT GRUBER,
CORIZON HEALTH, INC.,
RICHARD STEFANIK, M.D.,
MICHAEL HERBIK, D.O.,
RAYMOND MARCHAK, P.A., and
SUSAN BERRIER, R.N.,
Defendants.**

CIVIL ACTION

NO. 12-4046

O R D E R

AND NOW, this 27th day of August, 2015, upon consideration of Commonwealth Defendants' Motion to Dismiss the Second Amended Complaint (hereinafter "Commonwealth Defendants' Motion to Dismiss") (Document No. 68, filed April 7, 2015), Plaintiff's Brief in Opposition to the Commonwealth Defendants' Motion to Dismiss (Document No. 72, filed May 11, 2015), Defendants Corizon Health, Inc., Richard Stefanic, M.D. (Misidentified as "Dr. Stefanik"), Ray Machak, PA and Michael Herbik, D.O.'s Motion to Dismiss Plaintiff's Complaint (hereinafter "Medical Defendants' Motion to Dismiss") (Document No. 73, filed May 15, 2015), Plaintiff's Brief in Opposition to the Medical Defendants' Motion to Dismiss (Document No. 75, filed June 12, 2015), and Plaintiff's Motion, *Nunc Pro Tunc*, for Extension of Time to File Certificates of Merit (Document No. 55, filed March 4, 2015), for the reasons set forth in the accompanying Memorandum dated August 27, 2015,

IT IS ORDERED as follows:

1. Commonwealth Defendants' Motion to Dismiss is **DENIED WITHOUT PREJUDICE** to the extent that it asserts affirmative defenses of exhaustion of administrative remedies under the Prison Litigation Reform Act, running of the statute of limitations, and qualified immunity. Commonwealth defendants may reassert their arguments with respect to these defenses by motion for summary judgment and/or at trial if warranted by the facts and applicable law;

2. Medical Defendants' Motion to Dismiss is **DENIED WITHOUT PREJUDICE** to the extent that it asserts as an affirmative defense the running of the statute of limitations and seeks dismissal of plaintiff's claims for punitive damages. Medical defendants may reassert their arguments by motion for summary judgment and/or at trial if warranted by the facts and applicable law;

3. Commonwealth Defendants' Motion to Dismiss and Medical Defendants' Motion to Dismiss are **DENIED** in all other respects; and

4. Plaintiff's Motion, *Nunc Pro Tunc*, for Extension of Time to File Certificates of Merit, unopposed by defendants, is **GRANTED**. Plaintiff shall file certificates of merit pursuant to Pennsylvania Rule of Civil Procedure 1042.3(a)(1) and (b) on or before September 18, 2015. One (1) copy of each certificate of merit shall be served on the Court (Chambers, Room 12613) when the original is filed.

IT IS FURTHER ORDERED that a preliminary pretrial conference will be scheduled in due course. Discovery may proceed in the interim.

BY THE COURT:

/s/ Hon. Jan E. DuBois
DuBOIS, JAN E., J.